

**SENATE BILL**

**No. 28**

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**Introduced by Committee on Budget and Fiscal Review**

September 19, 2008

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An act to amend Section 19025 of, to add Sections 19136.1, 19136.3, and 19138 to, to repeal Section 19137 of, and to repeal Chapter 9.2 (commencing with Section 19740) of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to amend Section 35.20 as added to the Budget Act of 2008 by Assembly Bill 88 of the 2007–2008 Regular Session, relating to taxation.

LEGISLATIVE COUNSEL’S DIGEST

SB 28, as introduced, Committee on Budget and Fiscal Review. Taxation.

Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments under specified circumstances.

Existing corporation tax laws provide, with a specified exception, that if the amount of estimated tax exceeds the minimum franchise tax imposed on corporations, the amount payable shall be payable in installments.

This bill would modify the percentages of the estimated taxes payable pursuant to those installment payments.

The Personal Income Tax Law and the Corporation Tax Law impose a penalty on a taxpayer who underpays an estimated income tax. Those laws also specify that a penalty may not be imposed for an underpayment

in specified taxable years if the underpayment was created or increased by specified changes in law.

This bill would impose a penalty on a taxpayer subject to the Corporation Tax Law with a specified understatement of tax, as defined, in an amount equal to 20% of that understatement. This bill would specify that the penalty shall not be imposed if the understatement is attributable to specified changes in law.

This bill would also repeal certain provisions added by AB 1452 of the 2007–08 Regular Session relating to a tax amnesty program.

This bill would revise the requirement that the Department of Finance provide guidance with regard to the methodology employed in determining tax accruals and the timing of implementing any changes in tax accrual treatment.

This bill would also make changes regarding sections of the Revenue and Taxation Code added by AB 1452 of the 2007–08 Regular Session, relating to credits against taxes imposed by the Corporation Tax Law and fees required under the Personal Income Tax Law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19025 of the Revenue and Taxation Code  
2 is amended to read:

3 19025. (a) If the amount of estimated tax does not exceed the  
4 minimum tax specified by Section 23153, the entire amount of the  
5 estimated tax shall be due and payable on or before the 15th day  
6 of the fourth month of the taxable year.

7 (b) Except as provided in subdivision (c), if the amount of  
8 estimated tax exceeds the minimum tax specified by Section 23153,  
9 the amount payable shall be paid in installments as follows:

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If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month

1	Before the 1st day of				
2	the 4th month of				
3	the taxable				
4	year.....	25-30 (but	25-30	25-20	25-20
5		not less than			
6		the minimum			
7		tax provided			
8		in Section			
9		23153 and			
10		any tax under			
11		Section			
12		23800.5)			
13	After the last day of				
14	the 3rd month and				
15	before the 1st day				
16	of the 6th month				
17	of the taxable				
18	year.....	—	33 $\frac{1}{3}$ 40	33 $\frac{1}{3}$ 30	33 $\frac{1}{3}$ 30
19	After the last day of				
20	the 5th month and				
21	before the 1st day				
22	of the 9th month				
23	of the taxable				
24	year.....	—	—	50	50
25	After the last day of				
26	the 8th month and				
27	before the 1st day				
28	of the 12th month				
29	of the taxable				
30	year.....	—	—	—	100

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32 (c) If a wholly owned subsidiary is first subject to tax under

33 Section 23800.5 after the last day of the third month of the taxable

34 year of owner, the amount of the next installment of estimated tax

35 under subdivision (b) after the wholly owned subsidiary is subject

36 to tax under Section 23800.5 shall not be less than the amount of

37 the tax of the wholly owned subsidiary under Section 23800.5 and

38 an amount equal to that amount shall be due and payable on the

39 date the installment is required to be paid. For purposes of

40 determining which installment is the next installment of estimated

1 tax under subdivision (b), subdivision (b) shall be modified by  
2 substituting “includes the tax of a wholly owned subsidiary under  
3 Section 23800.5” for “exceeds the minimum tax specified by  
4 Section 23153.”

5 *(d) The amendments made to this section by the act adding this*  
6 *subdivision shall apply to installments due for each taxable year*  
7 *beginning on or after January 1, 2009.*

8 SEC. 2. Section 19136.1 is added to the Revenue and Taxation  
9 Code, to read:

10 19136.1. (a) Section 6654(d)(1)(A) of the Internal Revenue  
11 Code is modified to provide that in lieu of the required installments  
12 specified in that section, the amount of required installments shall  
13 instead be as follows:

14 (1) For the 1st and 2nd required installments, 30 percent of the  
15 required annual payment.

16 (2) For the 3rd and 4th required installments, 20 percent of the  
17 required annual payment.

18 (b) This section shall apply to installments due for each taxable  
19 year beginning on or after January 1, 2009.

20 SEC. 3. Section 19136.3 is added to the Revenue and Taxation  
21 Code, to read:

22 19136.3. (a) Section 6654(d)(1)(B) of the Internal Revenue  
23 Code is modified to additionally provide that clause (ii) shall not  
24 apply if the adjusted gross income shown on the return of the  
25 individual for the taxable year is equal to or greater than \$1 million  
26 (\$500,000 in the case of a married individual filing a separate  
27 return).

28 (b) This section shall apply to taxable years beginning on or  
29 after January 1, 2009.

30 SEC. 4. Section 19137 of to the Revenue and Taxation Code,  
31 as added by Assembly Bill 1452 of the 2007–08 Regular Session,  
32 is repealed.

33 ~~19137. (a) There shall be added to the tax for amounts in each~~  
34 ~~taxable year for which amnesty could have been requested a penalty~~  
35 ~~in an amount determined as follows:~~

36 ~~(1) For amounts that are due and payable (as provided in~~  
37 ~~subdivision (f)) on the last day of the tax amnesty period, an~~  
38 ~~amount equal to 50 percent of the accrued interest payable under~~  
39 ~~Section 19101 for the period beginning on the last date prescribed~~  
40 ~~by law for the payment of that tax (determined without regard to~~

extensions) and ending on the last day of the tax amnesty period specified in Section 19741.

(2) For amounts that become due and payable (as provided in subdivision (f)) after the last date of the tax amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the tax amnesty period specified in Section 19741. In computing the final amount upon which the penalty is computed, deposits made before the end of the tax amnesty period pursuant to Section 19041.5 shall reduce the amount upon which the penalty is computed. Payments or deposits made after the end of the tax amnesty period shall not reduce the amount upon which the penalty is computed.

(3) For purposes of paragraph (2), Sections 19107, 19108, 19110, and 19113 shall apply in determining the amount computed under Section 19101.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) (1) This section shall not apply to any amounts that are treated as paid during the tax amnesty period under paragraph (1) or (2) of subdivision (b) of Section 19743.

(2) This section shall not apply to any amount attributable to an assessment resulting from either of the following:

(A) An examination, within the meaning of Section 19032, where the Franchise Tax Board first contacted the taxpayer in writing in connection with that examination before March 27, 2009, and that assessment was not final before March 27, 2009.

(B) A proposed assessment under Section 19087 where the Franchise Tax Board first contacted the taxpayer in writing in connection with failing to file a return before March 27, 2009, and that assessment was not final before March 27, 2009.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a) or the determination of when an amount is considered due and payable.

~~(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.~~

~~(f) For purposes of this section, amounts are due and payable on the following dates:~~

~~(1) For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board, except that in no case shall it be prior to the day after the payment due date.~~

~~(2) For amounts of any liability disclosed on a return filed after the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board.~~

~~(3) For amounts of any liability determined under Section 19081 or 19082 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board's finding is mailed or issued.~~

~~(4) For all other amounts of liability, the date the assessment is final.~~

SEC. 5. Section 19138 is added to the Revenue and Taxation Code, to read:

19138. (a) (1) A taxpayer subject to the tax imposed under Part 11 (commencing with Section 23001) with an understatement of tax in excess of one million dollars (\$1,000,000) for any taxable year shall be subject to the penalty imposed under this section.

(2) For taxpayers that are required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the threshold amount prescribed in paragraph (1) shall apply to the aggregate amount of tax liability under Part 11 (commencing with Section 23001) for all taxpayers that are required to be or authorized to be included in a combined report.

(b) The penalty under this section shall be an amount equal to 20 percent of any understatement of tax. For purposes of this section, "understatement of tax" means the amount by which the tax imposed by Part 11 (commencing with Section 23001) exceeds the amount of tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year. For any taxable year

beginning before January 1, 2008, the amount of tax paid on or before May 31, 2009, and shown on an amended return filed on or before May 31, 2009, shall be treated as the amount of tax shown on an original return for purposes of this section.

(c) The penalty imposed by this section shall be in addition to any other penalty imposed under Part 11 (commencing with Section 23001) or this part.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) (1) No penalty shall be imposed under this section on any understatement to the extent that the understatement is attributable to a change in law that is enacted, promulgated, issued, or becomes final after the earlier of either of the following dates:

(A) The date the taxpayer files the return for the taxable year for which the change is operative.

(B) The extended due date for the return of the taxpayer for the taxable year for which the change is operative.

(2) For purposes of this subdivision, a “change of law” means a statutory change or an interpretation of law or rule of law by regulation, legal ruling of counsel, within the meaning of subdivision (b) of Section 11340.9 of the Government Code, or a published federal or California court decision.

(3) The Franchise Tax Board shall implement this subdivision in a reasonable manner.

(g) No penalty shall be imposed under this section to the extent that a taxpayer’s understatement is attributable to the taxpayer’s reasonable reliance on written advice of the Franchise Tax Board, but only if the written advice was a legal ruling by the Chief Counsel, within the meaning of paragraph (1) of subdivision (a) of Section 21012.

(h) This section shall apply to each taxable year beginning on or after January 1, 2003, for which the statute of limitations on assessment has not expired.

1 SEC. 6. Chapter 9.2 (commencing with Section 19740) of Part  
2 10.2 of Division 2 of the Revenue and Taxation Code, as added  
3 by Assembly Bill 1452 of the 2007–08 Regular Session, is  
4 repealed.

5 SEC. 7. Section 35.20, as added to the Budget Act of 2008 by  
6 Assembly Bill 88 of the 2007–08 Regular Session, is amended to  
7 read:

8 Sec. 35.20. If legislation is enacted amending Section 13302  
9 of the Government Code to allow the accrual of tax payments due  
10 more than two months after the close of the fiscal year for  
11 transactions occurring in the prior fiscal year, the Department of  
12 Finance shall provide guidance pursuant to Section 13310 of the  
13 Government Code with respect to the methodology to be employed  
14 in determining accruals and the timing of implementation of any  
15 changes in tax accrual practices. ~~This Sixty percent of the change~~  
16 ~~to accrual treatment of corporation income and franchise tax~~  
17 ~~payments and all of the change to the treatment of personal income~~  
18 ~~tax payments shall apply to the 2007–08 fiscal year and the balance~~  
19 ~~of the accrual change to corporation income and franchise tax~~  
20 ~~payments and all of the accrual change to personal income tax~~  
21 ~~payments shall be applied to the 2008–09 fiscal year and~~  
22 ~~subsequent fiscal years.~~

23 SEC. 8. (a) For purposes of applying Section 23663 of the  
24 Revenue and Taxation Code, as added by Assembly Bill 1452 of  
25 the 2007–08 Regular Session, any limitations on allowance of any  
26 credit against the “tax” that would apply to the assigning taxpayer  
27 in the absence of an assignment shall also apply to the same extent  
28 to the allowance of that assigned credit against the “tax” of the  
29 eligible assignee.

30 (b) Subdivision (d) of Section 17942 of the Revenue and  
31 Taxation Code, as added by Assembly Bill 1452 of the 2007–08  
32 Regular Session, only applies to taxable years beginning on or  
33 after January 1, 2009.

34 (c) The Legislature finds and declares that this section makes  
35 clarifying changes for purposes of the proper implementation of  
36 Sections 17942 and 23663 of the Revenue and Taxation Code, as  
37 added by Assembly Bill 1452 of the 2007–2008 Regular Session.

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